IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 69 OF 2005

M/s. Metalary Collaboration .. Petitioner (Org.Deft.)

Vs.

Shri Shrikant Mallappa Dongare .. Respondent (Org.Plff.)

Mr. N.V. Walawalkar with Mr. G.H. Keluskar for the Petitioner
Mr. V.B. Naik for Respondent.

CORAM: B.H. MARLAPALLE, J.

Reserved on : June 21, 2005.

Pronounced on : July 08, 2005.

P.C.:

1. Heard Mr. Walawalkar with Mr. Keluskar the learned counsel for the petitioner-tenant and Mr. Naik the learned counsel for the respondent-landlord.

2. This Revision Application questions the decree of eviction passed by the learned II Joint Civil Judge, Junior Division at Kolhapur in Regular Civil Suit No.751 of 1990 on 1/2/2002 and confirmed by the learned First Ad-hoc Additional District Judge at

Kolhapur on 15/2/2005 in Regular Civil Appeal No.136 of 2002. The trial court partly decreed the suit and directed the defendant to deliver vacant possession of the suit premises to the plaintiff on or before 31/5/2002 and the prayer for recovery of amount of arrears in rent was turned down.

3. The Lower Appellate Court found itself in agreement with the reasoning set out by the trial court for granting the decree of eviction, namely, the reasonable and bonafide requirement of the plaintiff for use and occupation of the suit premises. It was submitted by Mr. Walawalkar, the learned counsel for the petitioner-defendant that the Lower Appellate Court failed to discharge its function to make a critical analysis of the matter before it and mechanically affirmed the findings of the trial court without analysing the evidence adduced by the respective parties and in support of this submission reliance has been placed on the decision in the case of State of Rajasthan Vs. Harphool Singh (dead) through his LRs reported in **(2000) 5 SCC 652**. On the other hand Mr. Naik, the learned counsel for the

respondent-plaintiff while supporting the concurrent findings recorded by both the courts below, submitted that the evidence of Shrikant (P.W.1) corroborated by the evidence of Makarand (P.W.4) and the evidence of Ashok (D.W.1) has been duly considered on the issue of reasonable and bonafide requirement as well as comparative hardship, by both the courts below. By referring to the decision of this Court in the case of Shankar Bhiroba Vadangekar Vs. Ganpati Appa Vatara reported in **2000 (4) Mh.L.J.131**, it has been held by the trial court that the requirement of the landlord has to be considered on his own judgments regarding his absolute necessities and in the instant case that has been so considered by keeping in mind the well established principle of that the landlord is the best judge of his requirement and he must have the complete freedom in the matter of utilising the suit premises. The courts below have held that the requirement of the landlord in the instant case was real and genuine and the defendant would not suffer any hardship in view of his alternative establishment in the name of his wife, urged Mr. Naik.

4. The plaintiff-landlord was a partner with Mr. D.R. Khot in the firm called "M/s. B.B. & K Engineering Works". He retired from the said partnership firm by an agreement dated 22/8/1985 and consequently the portion admeasuring 68’ x 39’ from block No.19/8 corresponding to City Survey No.1328/45, E-Ward, Y.P. Powar Nagar, Kolhapur along with a room behind it admeasuring 14’ x 19’ came to be allotted to absolute ownership of the plaintiff and the same room came to be sold during the pendency of the suit. The defendant was a tenant in both these properties with a monthly rent of Rs.500/- and the tenancy month is corresponding with the English Calender. The plaintiff was entitled to receive half of the rent prior to 1/9/1985. It was contended that the defendant failed to pay the rent from December 1981 to 31/8/1985 and in the same the plaintiff’s share was Rs.11,250/-. A notice dated 1/1/1986 was issued demanding the arrears of rent but the tenant failed to honour the said notice and remained in arrears of payment of rent till February 1987. The total amount thus claimed was Rs.20,350/- including Rs.100/- towards the notice charges. It was further submitted

by the plaintiff that defendant has erected a permanent shed in the margin space of the suit premises admeasuring 42’ x 18’ without permission and also carried out construction of a core bhatti admeasuring 16’ x 12’. Thirdly, it was contended that the suit premises were required for carrying on the family business. By way of an amendment the plaintiff averred that his business and the business of his son Ramesh were separate and, therefore, the suit premises were required for starting the business of Makarand, son of Suresh. This Suresh was the second son of plaintiff and he was no more. Consequently, the responsibility of Suresh’s family fell on the plaintiff. The trial court framed in all six issues and held that,

(a) the plaintiff failed to prove that the defendant was in arrears of rent from December, 1981,

(b) the plaintiff failed to prove that the defendant was a willful defaulter under Section 12 of the Bombay Rent Act,

(c) the plaintiff failed to prove that the defendant had carried out permanent construction in the suit premises illegally as contemplated under Section 13(1)(b) of the Bombay Rent Act,

(d) the plaintiff proved that the suit premises are required by him reasonably and bonafide for his use and occupation,

(e) plaintiff would suffer greater hardship if the decree of eviction was not granted in his favour, and

(f) the plaintiff was entitled for the possession of the suit premises.

4A. Thus, first three issues were answered against the plaintiff and the remaining three issues have been answered in favour of the plaintiff by the trial court. The Lower Appellate Court on examination of the evidence adduced by both the parties reconsidered

all the issues framed by the trial court, while considering the appeal as well as the cross objections and has affirmed the findings of the trial court answered in favour of the plaintiff. Hence, the only question that is required to be considered is whether the findings recorded by both the courts below regarding the reasonable and bonafide requirement of the plaintiff in respect of the suit premises, call for any interference under the revisionary powers of this court.

5. On behalf of the plaintiff two witnesses had stepped in the witness box, namely, plaintiff himself (P.W.1) and his grand son Makarand (P.W.4). The defendant was the sole witness as D.W.1 in support of his case. P.W.4 Makarand is the son of Suresh - deceased son of the plaintiff. He received training in the working of a foundry on completion of his 12th standard. Makarand has his widowed mother and a brother. The plaintiff had stated that initial financial commitment for starting business for Makarand in the suit premises would be made by him and

balance would be the borrowing from the Bank. The evidence further went to show that on retirement of the plaintiff from the partnership business of M/s. B.B. & K Engineering Works, he instituted the suit so as to start his own business in the suit premises and in view of the pendency of the suit he started his business in the MIDC Industrial area at Gokul Shirgaon where he has set up his own foundry. Makarand has been trained in the said foundry and is hoping to start his own foundry business rather than continuing under his grand father's shelter. At the suit premises the other requirements to start a foundry business like power supply, no objection certificates from the civic authorities, pollution board and other agencies are already available and it would be certainly more helpful for Makarand to start his business rather than at any other place. This evidence of the plaintiff could not be brushed aside and when the defendant stepped in the witness box he only gave evasive replies showing his ignorance either on the retirement of the plaintiff from his original partnership with Mr. Khot or the training of Makarand in foundry business.

6. The trial court also noted that both the parties are financially affluent and the defendant had admitted that a plot in the MIDC Gokul Shirgaon area stood in the name of his wife. He also admitted that construction had been carried out on the said plot and the evidence went to prove that he is running a foundry in the same premises. Thus the issue of comparative hardship, if the decree was not granted, has been rightly answered in favour of the plaintiff and more so by keeping in mind the future interests of Makarand (PW 4), by the trial court. In the case of Shankar Bhiroba Vadangekar (Supra) this court held, inter alia, that it would be sufficient for the landlord to assert that the suit premises are reasonably and bonafide required by him and the onus would be on the tenant to show that the suit premises are neither reasonably nor bonafide required by the landlord. In the case at hand, the defendant went on showing ignorance about the requirement of Makarand to start his own business in the foundry line or about his experience etc. On the other hand, the plaintiff has reasonably proved his determinations to help his

grand son stand on his own in the line of foundry business which the family has been carrying out, but independently. The defendant was served notice of eviction Exh.84 way back in 1986 and in the meanwhile when he acquired another premises in the name of his wife, he failed to come clean before the trial court. In addition, he had sufficient time even after the suit was decreed to shift from the suit premises and augment the facilities at the premises in the MIDC Gokul Shirgaon area. The conduct of the defendant goes to show that he had no regards for the requirements of the plaintiff to set up a separate foundry for Makarand.

6A. The Lower Appellate Court has considered the issue of reasonable and bonafide requirement by assessing the evidence adduced by both the parties and noted that though initially the plaintiff wanted the suit premises for himself, with the passage of time the suit premises were required for the plaintiff’s grand son Makarand. The fact that all the members of the family were staying in the same bungalow along with plaintiff cannot be the sole reason to defeat the

claim of the plaintiff seeking possession of the suit premises for the requirement of his grand son. The Lower Appellate Court noted that the plaintiff had successfully discharged his burden to prove his reasonable and bonafide requirement in respect of the suit premises. It also considered the advantage of the suit premises as to facilitate to start a new foundry therein. Viewed from any angle it cannot be said that the concurrent findings recorded by both the courts below regarding the reasonable and bonafide requirement of the plaintiff so as to make his grand son an independent entrepreneur, suffer from any errors apparent on the face of the record warranting interference by this court under the revisionary powers and hence the challenge to the decree of eviction as confirmed by the Lower Appellate Court must fail at the threshold. I am fortified in my view by the decision in the case of Akhileshwar Kumar and ors. vs. Mustaqim and ors. reported in **(2003) 1 SCC 462**.

7. In the premises, the revision is hereby rejected summarily.

8. Mr. Walawalkar the learned counsel for the petitioner-defendant made an oral application for granting some time to vacate the suit premises and on taking instructions the learned counsel stated that the defendant is ready and willing to vacate the suit premises by 31st March, 2006. Mr. Naik the learned counsel for the plaintiff on the other hand consented to give a period of about three months to the defendant to vacate the suit premises and he left it to the court to decide any further period as the court may find reasonable. In the facts and circumstances of this case, it would be sufficient that the defendant is given time to vacate and handover the peaceful possession of the suit premises by 31st December, 2005, provided he files an undertaking to that effect.

9. Hence, the defendant is given time upto 31st December 2005 to vacate and hand over the peaceful possession of the suit premises to the plaintiff or to his grand son provided he submits an undertaking to the same effect with the Registry of this court within

a period of two weeks from today.

10. Certified copy is expedited.

(B.H. Marlapalle,J.)